tence for all of the conduct of which he was found guilty. In support of this conclusion he apparently makes three separate contentions, (1) a single sale can not constitute two distinct offenses under the statute, (2) the two separate sales of which the petitioner was convicted constituted only one offense, as the transactions "show a sort of continuous performance;" and (3) a violation of two requirements of the statute does not subject him to more than one punishment.

We submit that all of these contentions are disposed of by decisions of this Court.

(1) As this Court said in *Morgan* v. *Devine*, 237 U. S. 632, 641:

> * * * the test of identity of offenses is whether the same evidence is required to sustain them; if not, then the fact that both charges relate to and grow out of one transaction does not make a single offense where two are defined by the statutes. * * *

For recent applications of this principle, see *King* v. *United States*, 280 U. S. 521; *Albrecht* v. *United States*, 273 U. S. 1; *Ebeling* v. *Morgan*, 237 U. S. 625; *Gavieres* v. *United States*, 220 U. S. 338; *Burton* v. *United States*, 202 U. S. 344.

In *King* v. *United States*, 280 U. S. 521, *supra*, the petitioner was convicted under an indictment under Section 4 of the Harrison Act for sending morphine from one State to a person in another State, without having registered and paid the special tax as required by Section 1 of the Act. He

was sentenced to five years' imprisonment. Prior to trial he filed a plea alleging in substance that the offense described in that indictment was the same act as that described in a previous indictment which charged a sale of the same morphine "not in or from the original stamped package" in violation of Section 1 of the Act. The plea also averred that he had pleaded guilty to the first indictment and that under that indictment he had been sentenced to pay a fine and to serve one day in jail, which term he had served. The testimony sustained the allegations of the plea, as appears from the following extract copied from the record in that case (No. 70, October Term, 1929, R. 26–27):

> The testimony of witnesses on behalf of the United States proved the following facts: That on or about the 5th day of September, 1928, C. V. B. Moore, a narcotic agent, employed by the United States, together with an informant, went to Reno, Nevada, and at said time, while in Reno, Nevada, said informant, at the direction of said narcotic agent, wrote a letter to the defendant, Fred I. King, requesting the said Fred I. King to send to said informant at Reno, Nevada, one ounce of morphine. Defendant replied that he would secure the same and advised the informant that it would cost $55.00. Whereupon the informant sent to the defendant a registered letter enclosing a postal-money order for $55.00, which said money order was received by the de-

> fendant and cashed by him. Thereafter, on or about the 26th day of September, 1928, the defendant, Fred I. King, caused to be shipped by American Express from San Francisco to Reno, Nevada, addressed to the said informant, a package containing approximately one ounce of morphine. Said defendant had not registered nor paid the special tax as required by Section I of the Act of December 17th, 1914, and as amended; that the said package of morphine is the identical and same package of morphine referred to and described in the former indictment against the defendant, Fred I. King, returned and filed on October 2nd, 1928 (No. 20104–L) to which the defendant, Fred I. King, plead GUILTY and was convicted and sentenced by District Judge Bourquin on October 5th, 1928 * * *.

But the Circuit Court of Appeals (31 F. (2d) 17) and this Court sustained the judgment on the second indictment.

The situation in the *King case* differs but slightly from that in the instant case. The only possible distinction which can be urged is that in the *King case,* although the defendant was punished twice for one act, that was because that act resulted in two legal consequences, a sale and an interstate shipment, whereas in the instant case the ultimate act which is punished twice has but one legal consequence, a sale. But it should be borne in mind that what is denounced by the Harrison Act is not

a sale *qua* sale. Congress has no power to prohibit sales as such. Its power over sales of drugs is predicated upon its right to lay taxes, and the criminal provisions of the statute are designed to prevent evasions of the tax laid. In order to prevent such evasions it may prescribe punishment for a violation of each requirement which it prescribes. See *Nigro* v. *United States,* 276 U. S. 332, 341–342; *Alston* v. *United States,* 274 U. S. 289, 294.

The scheme of the Harrison Act is not first to prescribe all steps which must be taken and then to provide that any sale which is not made in compliance with all the requirements shall be punished. The framework of the Act is entirely different. Under separate sections different acts are declared unlawful. The gist of the offense denounced by the provision of Section 1 here involved is a dealing with drugs except in the original stamped package; such a dealing need not be a sale, and it may be a purchase. The gist of the offense under Section 2 is a *delivery* of drugs except in pursuance of a written order, and the offense denounced by this section is not committed by a person who *purchases* without making out such an order.

Although in the instant case it is true that the same sale was the basis for the convictions under both the third count and the fifth count, different evidence was required to sustain the conviction under these counts—evidence that the package was not stamped, in order to sustain the conviction

under the third count, under Section 1, and evidence that the sale was not made upon the form of order prescribed by the Commissioner in order to sustain the conviction under the fifth count, under Section 2.

The petitioner apparently does not contend that the provisions of Section 2 may not apply to the sale of drugs in an unstamped package. Anyway, such a conclusion would seem to be contrary to the opinion of this Court in *Nigro* v. *United States,* 276 U. S. 332, *supra,* which held that the provisions of Section 2 here involved apply to "all persons within the jurisdiction" and not merely those who by Section 1 are required to register and pay the tax. The Court said (pp. 345, 351):

> It would seem to be admissible and wise, in a law seeking to impose taxes for the sale of an elusive subject, to require conformity to a prescribed method of sale and delivery calculated to disclose or make more difficult any escape from the tax. If this may be done, any departure from the steps enjoined may be punished, and added penalties may be fixed for successive omissions, but all for the one ultimate purpose of making it difficult to sell opium or other narcotics without registering or paying the tax.
>
> * * * * *
>
> * * * There is no incongruity in increasing the criminal liability of the non-registered seller who fails to use an order form in his sales, or who misuses it.

This decision and particularly the language just quoted indicate clearly that the same act may be a separate offense under Sections 1 and 2 and that each may be punished separately.

On the precise point here involved, the decisions of the Circuit Courts of Appeals are in conflict. In *Ballerini* v. *Aderholt,* 44 F. (2d) 352, the Circuit Court of Appeals for the Fifth Circuit held that a sale which violated those provisions of Section 1 and Section 2, which were violated by the petitioner in the instant case, constituted but one offense, whereas in *Haggerty* v. *United States,* 52 F. (2d) 11, the Circuit Court of Appeals for the Eighth Circuit followed the decision in the instant case. (The *Haggerty case* is now pending before this Court on petition for certiorari, No. 460, October Term, 1931.) See also *Copperthwaite* v. *United States,* 37 F. (2d) 846 (C. C. A. 6th).

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(2) The two separate sales to the same person on different days must be treated as separate offenses. The second count charged, and the proof showed, a sale on May 28, while the other counts on which petitioner was convicted charged, and the proof showed, another sale on May 29.

Although the evidence does show that both sales were made to the same person, who was acting throughout in pursuance of a plan to obtain evidence against the petitioner, and that substantially no interval of time elapsed between the delivery of

one quantity of the drug and the payment of money for another quantity to be delivered in the future, and that consequently the two were, as the dissenting judge below characterized them, part of a "continuous performance," we submit that these facts are insufficient to amalgamate the two sales into one offense.

As the majority opinion of the court below said (R. 62):

> * * * There is nothing in the statute to indicate that Congress intended that such a state of facts should be considered as a continuing offense, or that such an offender should suffer but one penalty, or that the aggregate penalties should not exceed the maximum penalty provided for a separate offense. The offenses charged and proved are as separate and distinct as if appellant had sold the drug to different parties on the dates mentioned.

In *United States* v. *Daugherty,* 269 U. S. 360, this Court held that unauthorized sales of cocaine to three different persons on different days constituted three separate offenses, and that the maximum sentence of five years' imprisonment might be imposed for each offense.

---

(3) The petitioner's main contention is that the only section of the statute prescribing penalties—Section 9—in providing "that any person who violates or fails to comply with any of the require-

ments of this Act shall, on conviction," be fined or be imprisoned or both means that a person who violates one or more of the requirements of the statute *by one act* shall be subjected to only one punishment.

Although, as far as we can ascertain, this precise contention has not been previously made in any case in this Court, it is made in the teeth of the decision in the *King case*. There the two sentences imposed aggregated five years and one day, more than the maximum term of imprisonment prescribed by the statute for "any person who violates * * * any of the requirements of this Act." This language of the statute does not, we submit, indicate that several violations of the statute by one act shall be visited with but one punishment. This language, in prescribing the punishment, is similar to that used in many other acts,[1] and we believe that it has never been held that such language has such effect as the petitioner ascribes to it. It is true that the language of Section 9 does not specifically provide that each violation of the Act shall subject the offender to a separate penalty. But if it is not to be so interpreted, it would seem to follow that no person who violates the Act can be punished more than once, regardless of the number of times he violates the Act by entirely separate transactions.

[1] See, for example, 35 Stat. 1088, 1135 (Criminal Code, Section 235), 1145 (Criminal Code, Section 289); 36 Stat. 822, 824; 37 Stat. 240, 241; 41 Stat. 1444, 1445; 44 Stat. 918.

It would be little less absurd to construe the Act in accordance with the petitioner's contention.

II

REVERSIBLE ERROR WAS NOT COMMITTED IN PERMITTING THE CROSS-EXAMINATION OF WHICH PETITIONER COMPLAINS

The petitioner argues that he was prejudiced by the refusal of the trial court to sustain certain objections which he made to questions which were asked of the petitioner himself on cross-examination. The following is a transcript of so much of the record as it is necessary to consider in this matter (R. 22–23):

[The petitioner testified:]

> I buy job lots of women's ready-to-wear dresses, hosiery, and underwear, and sell them.
>
> * * * * *
>
> I have no other employment aside from what I have mentioned. I spend a great deal of time on the streets in Springfield. I am not personally acquainted with Henry Walker. I know John Smith, alias "Cookie" Smith.
>
> Q. Do you know a man named William Bapple?
>
> A. Yes.
>
> Mr. BAKER. I object, as improper cross-examination.
>
> The COURT. Let him answer.
>
> (To which action of the Court the defendant then and there excepted.)

WITNESS. Yes, sir; I do.

WITNESS (continuing): I know Edward Lewis, sometimes known as "Clarke."

I am personally acquainted with Bapple. I have merely a casual acquaintance with the others.

I know John Mahoney, sometimes called "Speck." I know him to speak to. I don't think I have talked to him over a half a dozen times in six or seven years. I know Lloyd Hemstrett.

Q. When is the last time you talked to "Speck" Mahoney?

Mr. BANDY. That is objected to as being immaterial and not cross-examination.

The COURT. I don't see the materiality of it but he may answer.

(To which ruling of the court the defendant then and there excepted.)

A. I don't know. I talked to him out there the other day in the court room. I don't remember just what day it was.

I know John Smith more than casually. I met him in the restaurant and different places around town. I never associated with him.

Q. Now I will ask you if these men Henry Walker, John Smith, alias "Cookie" Smith, Edward Lewis, alias "Clarke," John Mahoney, known as "Speck" and Lloyd Hemstrett are not all known to you to be morphine addicts?

Mr. BANDY. We object, because it is immaterial, prejudicial, and not cross-examination.

The COURT. He may answer.

(To which ruling of the court the defendant then and there excepted.)

A. Well, I have heard of some of those fellows; I have heard about Hemstrett. In fact if you go out to a ball game they call him a dope head and everything like that, but to know that he actually uses it, I don't know; I have never seen him use any dope.

Mr. ALEXANDER. How about the others?

WITNESS (continuing). I have never heard of Mahoney using dope. I heard that "Clarke" was a dope fiend, but I don't know it to be a fact. * * *

In order to appreciate the bearing of these questions, it should be noted that the petitioner in his previous testimony had not merely denied that he had made the sales in question but had also asserted that he told persons who appeared as witnesses for the Government that he did not know of any place where they could get morphine. (R. 21.) He also testified on cross-examination that his only employment was selling women's apparel. The cross-examination in question appears to have been a proper attempt to throw doubt upon the truthfulness of the previous testimony of the witness, and also to "place the witness in his proper setting." As this Court said in *Alford* v. *United States*, 282 U. S. 687, 691–692, and 694:

> Cross-examination of a witness is a matter of right. *The Ottawa*, 3 Wall. 268, 271. Its permissible purposes, among others, are that

the witness may be identified with his community so that independent testimony may be sought and offered of his reputation for veracity in his own neighborhood. Cf. *Khan* v. *Zemansky,* 59 Cal. App. 324, 327ff.; 3, Wigmore, Evidence (2d ed.) sec. 1368 I (1) (b); that the jury may interpret his testimony in the light reflected upon it by knowledge of his environment, *Kirschner* v. *State,* 9 Wis. 140; *Wilbur* v. *Flood,* 16 Mich. 40; *Hollingsworth* v. *State,* 53 Ark. 387; *People* v. *White,* 251 Ill. 67, 72ff.; *Wallace* v. *State,* 41 Fla. 547, 574ff.; and that facts may be brought out tending to discredit the witness by showing that his testimony in chief was untrue or biased. *Tla-Koo-Yel-Lee* v. *United States,* 167 U. S. 274; *King* v. *United States,* 112 Fed. 988; *Farkas* v. *United States,* 2 F. (2d) 644; see *Furlong* v. *United States,* 10 F. (2d) 492, 494.

Counsel often can not know in advance what pertinent facts may be elicited on cross-examination. For that reason it is necessarily exploratory; and the rule that the examiner must indicate the purpose of his inquiry does not, in general, apply. *Knapp* v. *Wing,* 72 Vt. 334, 340; *Martin* v. *Elden,* 32 Ohio St. 282, 289. It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop. Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and

> put the weight of his testimony and his credibility to a test, without which the jury can not fairly appraise them. *Tla-Koo-Yel-Lee* v. *United States, supra; King* v. *United States, supra; People* v. *Moore,* 96 App. Div. 56, affirmed without opinion, 181 N. Y. 524; cf. *People* v. *Becker,* 210 N. Y. 274. * * *
>
> * * * * * *
>
> The extent of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. It may exercise a reasonable judgment in determining when the subject is exhausted. *Storm* v. *United States,* 94 U. S. 76, 85; *Rea* v. *Missouri,* 17 Wall. 532, 542–543; *Blitz* v. *United States,* 153 U. S. 308, 312. But no obligation is imposed on the court, such as that suggested below, to protect a witness from being discredited on cross-examination, short of an attempted invasion of his constitutional protection from self-incrimination, properly invoked. * * *

See also *Raffel* v. *United States,* 271 U. S. 494, 497.

The petitioner also complains of the refusal of the court to sustain his objections to a question asked of the brother of the petitioner who appeared as a witness. In his direct testimony this witness stated that he was a real-estate broker. Upon cross-examination he testified that he signed "a few bonds." Apparently in the course of an

inquiry about the bonds which he signed, the following occurred (R. 27):

> Q. Are you on the bond of a man named Bapple, who is charged with the violation of the narcotic law in this court?
>
> Mr. BANDY. We object as being wholly immaterial and not proper cross-examination.
>
> The COURT. Let him answer.
>
> (To which ruling of the court the defendant then and there objected.)
>
> A. Yes, sir; I am on the bond of Mr. Bapple.
>
> Mr. BANDY. We further object because of the prejudicial quality of this question. Yesterday Mr. Blockburger was asked whether he knew William Bapple and now the District Attorney injects into the evidence the fact that William Bapple is under indictment for a violation of the same act under which the defendant Harry Blockburger is being tried.
>
> The COURT. Objection overruled.
>
> (To which ruling of the court the defendant then and there excepted.)
>
> A. Yes, sir.

The petitioner's primary objection to the testimony now is that it "had not been shown that Bapple was under indictment in that court." (Br. p. 19.) But, as the testimony of the witness himself established the fact that Bapple was under indictment, this complaint seems to be without foundation.

In any event we submit that the action of the trial court in permitting the cross-examination of the petitioner and his brother above referred to was within the scope of the discretion of the court; and, moreover, that if error was committed it was not sufficiently serious to be prejudicial.

III

THE JUDGMENT SHOULD NOT BE REVERSED ON ACCOUNT OF THE REMARKS MADE BY THE PROSECUTING ATTORNEY DURING HIS CLOSING ARGUMENT

The petitioner complains of certain statements made by the District Attorney in his closing argument to the jury. (Br. p. 20, 21.) All that the record discloses in regard to the first of these is the following (R. 28):

> During the course of the closing argument of Mr. Alexander the following transpired in the presence and hearing of the jury:
>
> I am an officer of the Government and the Court is an officer of the Government, and we know Ella Rush.
>
> Mr. BANDY. The defendants object to the statement that Ella Rush is known to this Court, and we ask that the jury be instructed to disregard that statement.
>
> The COURT. The jury is instructed to disregard the statement, except that the Court has seen her here and has seen the circumstances under which she comes here.
>
> Mr. BANDY. It wasn't limited to that.
>
> Mr. ALEXANDER. That is just what I mean.

All that the record discloses in regard to the second of these matters is the following (R. 29):

> Mr. ALEXANDER. Here is a pickpocket, and he wasn't shocked at that; that is the kind of people that they associated with.
>
> Mr. BANDY. That is objected to; it is an intimation those are the people the defendant associated with. If the Court please, he says that is the kind of people these men associated with.
>
> Mr. ALEXANDER. I think it is a fair inference.
>
> The COURT. The jury will understand that this is Mr. Alexander's conclusion from the evidence.

Apparently counsel for the petitioner at the time was not dissatisfied with the action of the court in respect of either of these matters. He made no motion to withdraw the case from the jury and took no exception to what was ultimately said. It does not appear that the remarks of the District Attorney were improper, but if they were, the impropriety seems to have been cured by the comment of the court. Anyway, they are not so prejudicial that this Court should reverse the judgment in the absence of any exception. See *Dunlop* v. *United States,* 165 U. S. 486; *Chadwick* v. *United States,* 141 Fed. 225 (C. C. A. 6th); *Higgins* v. *United States,* 185 Fed. 710, 716 (C. C. A. 6th); *Luterman* v. *United States,* 281 Fed. 374, 379–381 (C. C. A. 3d), certiorari denied,

260 U. S. 732; *Gay* v. *United States*, 8 F. (2d) 219, 220–221 (C. C. A. 9th); *Silkworth* v. *United States*, 10 F. (2d) 711, 721, certiorari denied, 271 U. S. 664; *Vendetti* v. *United States*, 45 F. (2d) 543 (C. C. A. 9th).

IV

THERE IS NO MERIT IN THE PETITIONER'S EXCEPTION TO A PORTION OF THE CHARGE OF THE DISTRICT COURT TO THE JURY

The petitioner took exception to only one part of the charge. In its charge the District Court said (R. 33):

> I told you that you are the judges of the credibility of the witnesses and of the weight of the evidence. The defendant Blockburger saw fit to go upon the witness stand in his own behalf. You were entitled to know who he was. On cross-examination the Government proved by him that he had heretofore been convicted of a felony and had been an inmate of the Missouri State Penitentiary. That evidence was permitted to be submitted to the jury as a fact concerning that witness in order that you might consider it in connection with his credibility as a witness, and that is the only purpose for which it was admitted.
>
> There was a rule at one time that one who had been convicted of a felony was an incompetent witness. That is not the rule now, but he is a competent witness and the

jury has a right to take the fact of a former conviction into consideration in determining the degree of credibility they will accord to him as a witness, and, if you believe him, to act upon his testimony.

At the conclusion of the charge, the following colloquy took place (R. 34):

> Mr. Bandy [Counsel for the defendants below]: The defendants except to the statement contained in that part of the charge referring to the testimony brought out in cross-examination of the defendant Harry Blockburger that he had been convicted and confined in the penitentiary, that there was once a rule of law that one who had been convicted of a felony was an incompetent witness, the application being that that in an unreasonable way and inferentially disparages his testimony at this time, that limitation against his testimony having been removed by statute, and we except to it.
>
> The Court. The jury will disregard the reference in the charge to the law as it formerly stood with reference to the incompetency of a witness convicted of a felony.

The part of the charge excepted to seems harmless, but if there was any error it was corrected by the subsequent remark of the court. Although the petition specified this matter as error, the brief submitted by the petitioner on the merits does not mention it.

CONCLUSION

Although the sentence imposed seems unduly severe, we submit that it was authorized by law and that no ground exists upon which the judgment should be reversed. The petitioner's appeal should be to the executive.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

NUGENT DODDS,
Assistant Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

HARRY S. RIDGELY,
Attorney.

NOVEMBER, 1931.

APPENDIX

HARRISON NARCOTIC ACT

Sec. 1, as amended by the Revenue Act of 1926, c. 27, 44 Stat. 9, 97; U. S. C., Title 26, Sec. 692, so far as pertinent, provides:

* * * * *

> It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this section by the person in whose possession same may be found; * * *

Sec. 2 (c. 1, 38 Stat. 785, 786; U. S. C., Title 26, Sec. 696) provides in part as follows:

> That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. * * *

Section 9 (38 Stat. 789; U. S. C., Title 26, Sec. 705) provides:

> That any person who violates or fails to comply with any of the requirements of this

Act shall, on conviction, be fined not more than $2,000 or be imprisoned not more than five years, or both, in the discretion of the court.

* * * * *

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No. 374

In the Supreme Court of the United States

OCTOBER TERM, 1931

HARRY BLOCKBURGER, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

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No. 374

HARRY BLOCKBURGER, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

At the hearing the question was raised as to whether the bill of exceptions was allowed and filed on time. An examination of the record shows that it was.

Sentence was imposed on July 20, 1929. (R. 9–10.) At that time it was ordered by the court that the defendant have thirty days within which to file his bill of exceptions. That thirty days would have expired on August 19, 1929. The orders extending the time for filing the bill of exceptions appear in two different places in the record. (R. 39–41, 46–54.) The following are the dates of the

orders and the limit of the time as extended by each:

Order of—	Extending time
August 18, 1929	Through September 18.
September 17	Through October 17.
October 17	Through November 16.
October 19	For 30 days.
November 18	Through December 18.
December 18	Through January 17, 1930.
January 13, 1930	Through February 16.
February 15	Through February 26.
February 26	Through March 25.
March 25	Through April 4.
April 4	Through May 3.
May 2	Through June 3.

The bill of exceptions was filed on May 16, 1930. (R. 10.) It appears elsewhere in the record (R. 38–39) that the judge signed the allowance and approval of the bill of exceptions on that day.

The orders extending the time were effective, although some of them were made after the expiration of the term. *Stickel* v. *United States*, 294 Fed. 808 (C. C. A. 8th); Judicial Code, Sec. 79 (Act of March 3, 1911, c. ~~209~~ 231, 36 Stat. 1087, 1110 (U. S. C., Title 28, Sec. 152)).

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

NUGENT DODDS,
Assistant Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

NOVEMBER, 1931.

U. S. GOVERNMENT PRINTING OFFICE: 1931

SUPREME COURT OF THE UNITED STATES.

No. 374.—October Term, 1931.

Harry Blockburger, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 4, 1932.]

Mr. Justice Sutherland delivered the opinion of the Court.

The petitioner was charged with violating provisions of the Harrison Narcotic Act: c. 1, § 1, 38 Stat. 785, as amended by c. 18, § 1006, 40 Stat. 1057, 1131, (U. S. C., Title 26, § 692);* and c. 1, § 2, 38 Stat. 785, 786, as amended, (U. S. C., Title 26, § 696).** The indictment contained five counts. The jury returned a verdict against petitioner upon the second, third and fifth counts only. Each of these counts charged a sale of morphine hydrochloride to the same purchaser. The second count charged a sale on a specified day of ten grains of the drug not in or from the original stamped package; the third count charged a sale on the following day of eight grains of the drug not in or from the original stamped package; the fifth count charged the latter sale also as having been made not in pursuance of a written order of the purchaser as required by the statute. The court sentenced petitioner to five years imprisonment and a fine of $2,000 upon each count, the terms of

*It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs [opium and other narcotics] except in the original stamped package or from the original stamped package; and the absence of appropriate taxpaid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this section by the person in whose possession same may be found; . . ."

**It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs specified in section 691 of this title, except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue."